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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,836	03/06/2002	Javier Ruiz	Y02-007	8624

7590 09/23/2003

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EXAMINER

EVANS, FANNIE L

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/091,836

Applicant(s)

RUIZ, JAVIER

Examiner

F. L. Evans

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See the remarks on page 2.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 15-18.

Claim(s) objected to: _____.

Claim(s) rejected: 1-14.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Remarks

The proposed amendments to the claims do not place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

With respect to claim 1, the function of the shutter assembly set forth in lines 13 and 14 of claim 1 is confusing. Does applicant intent for the shutter assembly to be positioned between the first optical element and the reference sample? If so, what is the relationship between the shutter assembly of claim 1 and the second shutter assembly of claim 6? Additionally, the "to from" in line 14 of claim 1 is not understood.

With respect to claim 2, "the sample under measurement" bridging lines 3 and 4 lacks antecedent basis.

With respect to claim 3, "the ... sample under measurement" in line 3 lacks antecedent basis.

With respect to claim 6, "the sample under measurement" bridging lines 2 and 3 lacks antecedent basis. Additionally, the relationship between the second shutter assembly of claim 6 and the other components of the spectrometer is not specifically set forth.

With respect to claim 6, "the sample under measurement" in line 4 lacks antecedent basis.

With respect to claim 12, "the sample under measurement" in line 3 lacks antecedent basis.

With respect to claim 13, "the unknown sample" in line 4 lacks antecedent basis.

Fax/Telephone Numbers

Papers related to this application may be submitted to Technology Center 2800 by facsimile transmission. The faxing of such papers must conform with the notice published in the

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Official Gazette, 1096 OG 30 (November 15, 1989). The fax number for Technology Center 2800 is (703) 872-9306 for regular and After Final communications.

If applicant wishes to send a fax containing a Proposed Amendment for discussion during either a personal interview or a telephone interview then the fax should:


1) Contain either the statement "**DRAFT**" or "**PROPOSED AMENDMENT**" on the Fax Cover Sheet; and

2) Should be unsigned by the attorney or agent.

This will ensure that the amendment will not be entered into the application and will be forwarded to the examiner as quickly as possible.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner whose telephone number is (703) 308-4805. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font, can be reached on (703) 308-4881. The TC Receptionist's telephone number is (703) 308-0956.

Any other inquiry of a technical nature, and all inquiries of a general nature including those relating to the status of an application should be directed to TC 2800 Customer Service Office whose telephone number is (703) 306-3329.


F. L. EVANS
PRIMARY EXAMINER
ART UNIT 2877

file

September 21, 2003